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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DECLAN P. KELLY and JOZEF P. VAN GASSEL

Appeal 2009-004806
Application 10/538,207
Technology Center 2600

Decided: March 29, 2010

Before JOHN C. MARTIN, MAHSHID D. SAADAT, and MARC S. HOFF,
Administrative Patent Judges.

MARTIN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's January 23, 2008, nonfinal Office Action (hereinafter "Office Action") rejecting claims 1-32, which are all of the pending claims.

We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. Appellants' invention

Appellants' invention relates to providing audio, visual, or other content to a device connected to a network. Specification 1:4-5.¹

Appellants' Figure 1 is reproduced below.

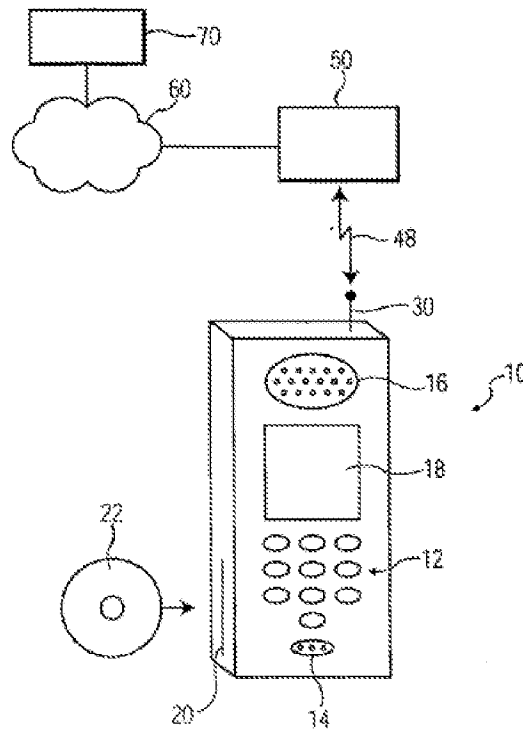


FIG. 1

Figure 1 is an embodiment of a system in accordance with the invention (*id.* at 2:24). Mobile phone 10 interfaces with cellular network 50

¹ References herein to Appellants' Specification are to the Application as filed rather than to corresponding Patent Application Publication 2006/0111145 A1.

over air interface 48 (*id.* at 2:27-28) and has a number of standard features, including a keypad 12, microphone 14, speaker 16, and display 18 (*id.* at 3:1-2). Mobile phone 10 also includes a media drive 20, which is depicted in this embodiment as an optical disc drive for receiving a miniature optical disc 22, although drives for receiving other media, such as magnetic discs and flash memory, alternatively can be used (*id.* at 3:5-6).

Optical disc 22 includes content, such as audio or visual content (*id.* at 3:18-19). Access to the disc by the mobile phone user is controlled by a service that is accessible through the network, such as service 70 (*id.* at 3:25-26). An application program in the mobile phone reads from disc 22 the protocols needed to connect mobile phone 10 with service 70, such as by reading the Internet address of service 70 from disc 22 and then initiating the connection between mobile phone 10 and service 70 via the air interface 48, cellular network 50, and Internet 60 (*id.* at 3:26-31).

B. The claims

The independent claims before us are claims 1, 7, 15, 26, and 28. Claim 1, which is representative, reads as follows:

1. A system for providing playback of media content to a user, the system comprising:
 - a) a portable wireless device, the wireless device having a media drive and an application that reads and plays back content from a medium inserted in the media drive;
 - b) a service that communicates with the wireless device via a wireless network, the service providing control commands

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to the application program for controlling playback of content
from the medium when inserted in the media drive.

Claims App. (Br. 10.)

C. The rejection

Claims 1-32 stand rejected under 35 U.S.C. § 102(e) for anticipation
by the following reference:

Harrington US 2002/0156909 A1 Oct. 24, 2002

THE ISSUE

The sole issue raised by Appellants' arguments is whether the
Examiner erred in finding that Harrington discloses a client device that
contains a media drive for reading and playing back FlashTM movies.

ANALYSIS

Harrington's invention relates to server-side control of a FlashTM
movie playing on a client device. Harrington [0002]. Systems consistent
with Harrington's invention provide a system and method for relating
Temporal Signals (which appear, for example, on a television broadcast, a
VHS or Beta tape, CD-ROM, DVD, CD, memory stick, or other medium)
with a Flash movie on a client device (accessible, for example, via the
Internet) (*id.* at [0014]).

In addressing the “first system” depicted in Figure 1, Harrington explains that “[t]he client device 112 may be a personal computer, a set-top box, a digital TV, a Web tablet, a PDA, a wireless device, or any other device with a connection to a network and the ability to run a Web browser with a Flash player.” *Id.* at [0034].

Figure 4 of Harrington is reproduced below.

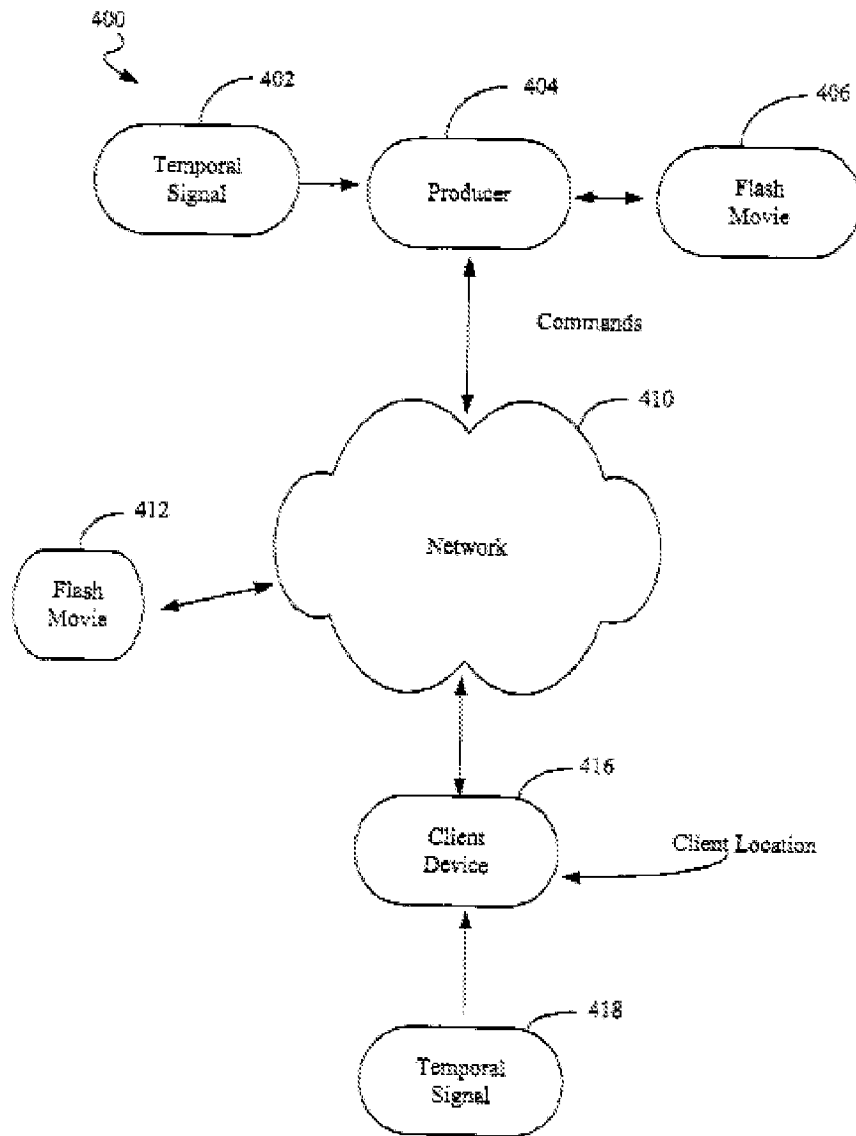


Fig. 4

Figure 4 is a diagram of Harrington's "second system" for server-side control of a Flash movie (*id.* at [0024]). Client device 416 is connected to a network 410, such as a wireless network, an intranet, an extranet, or the Internet (*id.* at [0059]). To cause the Flash movie 412 to be reactive to

Temporal Signals 402, the producer 404 may push playlist commands to the Flash movie 412 and also may push new functionality, such as a new Flash movie, to the client device 416 (*id.* at [0060]). Preferably, the Flash movie 412 resides at a site on the network accessible via an URI (uniform resource identifier²) entered into a browser running on the client device 416, and the Flash movie 412 is loaded on the client device 416 (*id.* at [0059]). In a sentence relied on by the Examiner, Harrington further explains that “[a]lternatively, the Flash movie 412 may be loaded from a CD-Rom [sic; CD-ROM], a floppy disk, or from any memory element connected to the client device.” *Id.* Based on this passage, the Examiner found that the client device inherently includes a media drive. (Answer 7.) For the following reasons, we agree with the Examiner’s conclusion but find that the case for inherency is even stronger than the case stated by the Examiner.

The Examiner’s reasoning is based on interpreting the “CD-Rom” and “floppy disk” in the above-quoted sentence to be examples of the recited “any memory element connected to the client device.” *See* Answer 7 (“The disclosed CD-Rom, floppy disk, or any *other* memory elements are examples of *mediums*.”) (first emphasis added). As a result of that interpretation, the discussion between the Examiner and Appellants has concerned what, if anything, is implied by describing a CD-ROM or floppy disk as “connected to the client device.”

² Harrington [0007].

Our understanding of the sentence in question is that the phrase “connected to the client device” would have been understood to apply to “any memory element” but not to “a CD-Rom, a floppy disk.” We reach this conclusion for several reasons. The first is that the sentence in question does not read “from a CD-Rom, a floppy disk, or from any *other* memory element connected to the client device” (emphasis added), language that would identify the CD-ROM and floppy disk as examples of a “memory element connected to the client device.” Second, the presence of “from” in both of the phrases “from a CD-Rom, a floppy disk” and “from any memory element connected to the client device” indicates that the “connected to the client devices” language modifies only “any memory element.” The third reason is that Harrington discloses (at [0034]) that the client devices can take the form of personal computers, devices that were known, when Harrington was filed, to be available with built-in CD-ROM and floppy disk drives. We note that Appellants, who did not file a Reply Brief, have not challenged the Examiner’s finding that “[t]he Computer 806 as shown in Figure 8 clearly shows media drives within the computer.” (Answer 7.)³ For the above reasons, we are of the opinion that the sentence in question would have been understood to mean that the Flash movie can be loaded either from a CD-ROM or floppy disk that has been inserted into a suitable drive in the client

³ Nor have Appellants challenged the Examiner’s finding that “Harrington further discloses a client device being a PDA (i.e., a PalmTM device which is known to have a media drive, ¶ [0069] lines 13 & 14).” (Answer 7-8.)

device (as required to satisfy claim 1) or from a memory element that is connected to the client device.⁴

For the above reasons, the same interpretation applies to the following similar sentence describing the Figure 6 embodiment: “Alternatively, the Flash movie 612 may be downloaded directly to the client device from a CD-ROM, a floppy, or from a memory device connected with the client device.” *Id.* at [0068]. Appellants, specifically directing our attention to the term “downloaded” in this paragraph, argue that

the use of the term “downloaded” with reference to media devices that are ‘connected’ to the client device necessarily implies that the media devices are not included within the client device. As the term is conventionally used in the art, ‘downloading’ is always associated with the transfer of information from one device to another device, and is not used in reference to the transfer of information within the same device.

(Br. 7.) This argument is unconvincing because this interpretation of “downloaded” lacks evidentiary support in the record and because the argument incorrectly assumes that the phrase “connected with the client device” applies to “a CD-ROM, a floppy” as well as to “a memory device.”

Appellants also argue that “Harrington's [0014] specifically distinguishes between the media devices (VHS or Beta tape, CD-ROM, DVD, CD, memory stick, or other medium) and the Flash movie that is on the client device, and does not teach that these media devices are included

⁴ Appellants do not argue that Harrington fails to disclose implementing the client device as a “portable wireless device,” as required by the claims.

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within the client device, as claimed.” (Br. 5). This argument is unpersuasive because the “media devices” in paragraph [0014] are used to store the “Temporal Signals” rather than Flash movies.

The rejection of independent claim 1 for anticipation by Harrington is therefore affirmed, as is the anticipation rejection of independent claims 7, 15, 26, and 28, as to which Appellants merely repeat their claim 1 arguments. The rejection of dependent claims 2-6, 8-14, 16-25, 27, and 29-32 is affirmed because those claims are not separately argued. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

DECISION

The rejection of claims 1-32 under 35 U.S.C. § 102(e) for anticipation by Harrington is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v) (2009).

AFFIRMED

gvw

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